

PTO/SB/92 (12-97)  
Approved for use through 9/30/00. OMB 0651-0031  
Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it contains a valid OMB control number.

## Certificate of Mailing under 37 CFR 1.10

Express Mail Label No. EV 571046018 US

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as Express Mail in an envelope addressed to:

COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, VA 22313-1450

Docket No. ENOS0001

on 9 March 2005

Date

**BEST AVAILABLE COPY**

Signature

Della Revecho

Typed or printed name of person signing Certificate

Note: Each paper must have its own certificate of mailing, or this certificate must identify each submitted paper.

Attached to this coversheet please find the following documents:

- Notice of Appeal (1 page in duplicate for accounting purposes);
- Fee Transmittal (1 page in duplicate for accounting purposes);
- Appeal Brief (114 pages);
- Action by Written Consent of the Sole Shareholder (2 pages);
- Signed Copy of Acquisition (13 pages); and
- Return Postcard

The above documents are being submitted to the USPTO in triplicate.



**Certificate of Transmission Under 37 C.F.R. §1.10**

Express Mail Label : EV 571046018 US

Date of Deposit: 9 March 2005

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to the Commissioner

Commissioner for Patents

Mail Stop – Appeal Brief Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Date: 03/09/2005

Printed Name: Della Revecho

Signature: 

**BEFORE THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BOARD OF APPEALS AND INTERFERENCES**

---

In re Application of : Michail Petropoulos et al.  
Serial No. : 09/819,180  
Filed : 3/27/2001  
Art Unit : 2161  
Examiner : Nguyen, Cindy  
Title : RECONFIGURABLE QUERY GENERATION SYSTEM  
FOR WEB BROWSERS  
Atty. Docket No. : ENOS0001

---

Honorable Commissioner of  
Patents and Trademarks  
Washington, D.C. 20231

**BRIEF ON APPEAL**

This is an appeal from the Primary Examiner of Group Art Unit 2161 refusing claims 21 and 30 set forth in APPENDIX A hereto.

03/14/2005 JBALINAN 00000156 071445 09819180

02 FC:2402 250.00 DA



## TABLE OF CONTENTS

REAL PARTY IN INTEREST.....	3
RELATED APPEALS AND INTERFERENCES .....	3
STATUS OF CLAIMS.....	3
STATUS OF AMENDMENTS .....	3
SUMMARY OF CLAIMED SUBJECT MATTER.....	4
GROUND OF REJECTION TO BE REVIEWED ON APPEAL .....	5
APPLIED PRIOR ART REFERENCES .....	5
THE ISSUES.....	5
GROUPING OF CLAIMS .....	5
ARGUMENT AND DISCUSSION.....	6
CONCLUSION.....	17

APPENDIX A - Applicant's Claims 21, 30

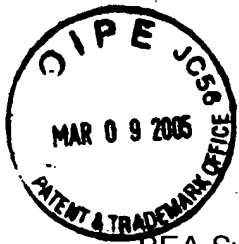
APPENDIX B - Applicant's Figures 1-12

APPENDIX C - Non-Final Office Action dated 4-14-2004

APPENDIX D - Final Office Action dated 1-10-2005.

APPENDIX E - U.S. Patent No. 5,897,622 to Blinn et al. ("Blinn")

APPENDIX F - U.S. Patent No. 6,182,136 to Ramanathan et al. ("Rama")



#### REAL PARTY IN INTEREST

BEA Systems, Inc. (a Delaware corporation) is the real party in interest. This is because BEA Systems, Inc. is the sole shareholder of Epoch Acquisition Corp., which merged with Enosys Markets, Inc., the Assignee of the subject patent application. The Assignment to Enosys Markets, Inc. was recorded in the U.S. Patent & Trademark Office on the date of 03/27/2001 at Reel 011708 Frame 0525. The merger of Epoch Acquisition Corp. and Enosys Markets, Inc. is documented by a document entitled "Agreement of Merger of Epoch Acquisition Corp. and Enosys Markets, Inc.", which was recently submitted to the Office for recording. The ownership of Epoch Acquisition Corp. by BEA Systems, Inc. is documented in the document entitled "Action By Written Consent of the Sole Shareholder of Epoch Acquisition Corp.", which was recently submitted to the Office for recording.

#### RELATED APPEALS AND INTERFERENCES

No other appeals or interferences are known to be related to the subject patent application.

#### STATUS OF CLAIMS

The application was originally filed with claims 1-38. No claims have been added or canceled. Therefore, claims 1-38 are pending in the application.

Claims 1-20, 22-29, and 31-38 are allowable. Claims 21 and 30 stand rejected; these claims are being appealed.

#### STATUS OF AMENDMENTS

No amendments have been made in this application.

## SUMMARY OF CLAIMED SUBJECT MATTER

### Introduction

As recommended by MPEP 1206, the following summary of the invention comprises reading of an appealed claim on the drawings and specification, to enable the Board to more determine where the claimed subject matter appears in the application. This particular reading is not intended to limit the claims in any way.

Reference numerals beginning with 1 appear in FIGURE 1, numerals beginning with 2 appear in FIGURE 2, and so on. For ease of reference, all Figures of Applicants' drawings are shown in Appendix B.

### Claim 21

A query processing platform (FIG. 1, ref. 102; Page 9, lines 15-19; Page 12, line 1 - Page 13, line 10), comprising:

multiple control schemas (FIG. 1, ref. 123b; Page 18, line 32 - Page 19, line 10), and multiple query form controls (FIG. 1, ref. 120; Page 14, line 3 - Page 17, line 6) each comprising an instance of one of the control schemas;

one or more query form schemas (FIG. 1, ref. 123; Page 18, line 32 - Page 19, line 10) and multiple query form annotations (FIG. 1, ref. 122; Page 17, line 7 - Page 18, line 31) each comprising an instances of one of the query form schemas;

a data schema (FIG. 1, ref. 128; Page 13, line 10 - Page 14, line 2);

appearance templates (FIG. 1, ref. 124; Page 19, line 11 - Page 21, line 27);

a compiler (FIG. 1, ref. 104; Page 22, line 6 - Page 23, line 4) including access to the controls, annotations, and appearance templates;

a run-time engine (FIG. 1, ref. 108; Page 23, lines 5-24) including a query rendering engine (FIG. 1, ref. 110) and a query assembler (FIG. 1, ref. 112);

subquery generators (FIG. 1, ref. 116; Page 21, line 28 - Page 22, line 5) accessible by the assembler and the compiler.

#### GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Claims 21 and 30 stand rejected under 35 USC 103(a) as being unpatentable over the combination of U.S. Patent No. 5,897,622 to Blinn et al. ("Blinn") and U.S. Patent No. 6,182,136 to Ramanathan et al. ("Rama"). These rejections were made in the non-final office action dated April 14, 2004, which is enclosed under Appendix C. These rejections were not explicitly restated in the final office action mailed on January 10, 2005 (Appendix D).

#### APPLIED PRIOR ART REFERENCES

For ease of reference, Blinn and Rama are shown in Appendices D and E.

#### THE ISSUES

The sole issue in this appeal is whether claims 21, 30 are patentable under 35 USC 103(a) over the proposed Blinn-Rama combination.

#### GROUPING OF CLAIMS

The claims do not stand or fall together. The groupings of claims, which are independently patentable are as follows:

A first group including claim 21.

A second group including claim 30.

### ARGUMENT AND DISCUSSION

#### Subparagraph (i) B 35 USC 112, FIRST PARAGRAPH

No grounds of rejection exist under this subparagraph.

#### Subparagraph (ii) -- 35 USC 112, SECOND PARAGRAPH

No grounds of rejection exist under this subparagraph.

#### Subparagraph (iii) -- 35 USC 102

No grounds of rejection exist under this subparagraph.

#### Subparagraph (iv) -- 35 USC 103 REJECTIONS

##### Introduction

The Office Action dated 4-14-2004 rejected claims 21 and 30 under 35 USC 103 as being unpatentable over the combination of Blinn and Rama. Applicants previously traversed, and presently appeal this rejection. The Office Action of 1-10-2005 maintained the previous grounds of rejection as to claims 21 and 30. The claims are patentable as-is, since the Examiner has failed to satisfy the requirements to establish a *prima facie* case of obviousness, as discussed in greater detail below.<sup>1</sup>

---

<sup>1</sup> MPEP 2142.

It is unclear how Rama is being applied to the claims at issue. Initially, claims 21 and 30 were rejected as being obvious over Blinn/Rama, but the Examiner only discussed Rama in the context of features from other claims, these features being absent from claims 21 and 30. [Office Action of 4-14-2004: page 3, third para] The Examiner later withdrew all rejections related to these features, and allowed all of claims with language to which Rama had been applied. [Final Office Action of 1-10-2005] In view of the allowance of such claims, and lack of any discussion of Rama in the context of claims 21 and 30, it is unclear whether Rama is being applied to the appealed claims.

Nonetheless, for the sake of completeness, the teachings of Rama are addressed (and dismissed) as shown below.

#### Teaching/Suggestion of Claim Limitations

First, the *prima facie* obviousness case is incomplete because, even if the references were to be combined as suggested (albeit improperly, as discussed below), the combination still does not teach or suggest all the claim limitations.<sup>2</sup> To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the Examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references.<sup>3</sup>

All words in a claim must be considered in judging the patentability of that claim against the prior art.<sup>4</sup> Taking claim 30 as an example, the proposed combination of references fails to teach the following combination:

“ A query processing platform, comprising:

---

2 MPEP 2142, 2143.03.

3 *Ex Parte Clapp*, 227 USPQ 972, 973 (Bd. Pat. App. & Inter. 1985). MPEP 706.02(j).

4 *In re Wilson*, 424 F.2d 1382, 165 USPQ 494, 496 (CCPA 1970). MPEP 2143.03.



multiple query form schemas and multiple query form annotations each comprising an instance of one of the query form schemas;  
a data schema;  
appearance templates;  
a compiler including access to the annotations and appearance templates;  
a run-time engine including a query rendering engine and a query assembler;  
subquery generators accessible by the assembler and the compiler."

First of all, Blinn does not teach a "query processing platform." Blinn is unconcerned with query processing, electing instead to store database queries in the database to isolate applications that access the database from differences in schemas and data sublanguages. [Blinn: col. 3, lines 34-45] With Blinn, a query module 142 passes a query name to the database module 127. The database module 127 uses the query name to retrieve the query from the database 121 and then passes the query to the database 121 for execution. The database 121 in turn executes the query and returns the query results to the database module 127 to produce an access object having the query results. [Blinn: col. 10, lines 18-42] Blinn omits further detail about query generation and execution in the database, choosing instead to emphasize sales order processing and web page generation. At any rate, Blinn does not concern a query processing platform, as claimed.

Claim 30 is further distinguishable from the applied art because the applied art does not show the claimed combination including "multiple query form schemas and multiple query form annotations each comprising an instance of one of the query form schemas." In contrast, Blinn's own words show that Blinn has nothing to do with query form schemas and query form annotations. Instead, Blinn's only mention of "schema" occurs in relation to Blinn's purported independence from schemas. For example, Blinn is said to achieve flexibility "through use of display templates and a database schema independent query mechanism." [Blinn: col. 3, lines 10-13] Blinn's database module is said to be "capable of retrieving data from the database without regard to its schema." [Blinn: Abstract] Blinn purportedly enables "merchants to

protect their investments in existing databases by providing a database schema independent query mechanism" and "provides for the storage of database queries in the database to isolate applications that access the database from differences in schemas and data sublanguages." [Blinn: col. 3, lines 36-45] Because of Blinn's purported database schema independence, Blinn's order processing module does not require modification for each change to the database. [Blinn: *Id*] Blinn is also silent as to any "instances" of schemas. Lacking any further discussion of schemas (other than the goal of being independent of database schema), then, Blinn fails to teach the claimed feature of "multiple query form schemas and multiple query form annotations each comprising an instance of one of the query form schemas."

This claimed feature is also missing from Rama, for the sake of argument (it is unclear whether Rama is being applied to the appealed claims, as discussed above). At any rate, Rama (like Blinn) lacks the feature of "multiple query form schemas and multiple query form annotations each comprising an instance of one of the query form schemas." Rather than the claimed "query form schemas" and "query form annotations," the Examiner merely introduced Rama in an attempt to show something completely different, namely, "mapping between the specified appearance template and the data schema and between the specified subquery generator and the data schema." [Office Action of 4-14-2004: page 3, third para.] Accordingly, the claimed "multiple query form schemas and multiple query form annotations" are missing from both Blinn and Rama.

Also missing from the applied art is "a compiler including access to the annotations and appearance templates," as claimed. Lacking the claimed query form annotations (as discussed above), Blinn and Rama cannot possibly teach the claimed compiler "including access to the annotations and appearance templates."

The applied art further lacks the claimed "query assembler." The Examiner suggested that Blinn's col. 12, lines 35-56 somehow teach the claimed query assembler. Rather than any query assembler, this passage discusses Blinn's order processing module 129. The order processing module creates and processes an order. [Blinn: col. 12, lines 8-11] "Upon receiving an order, a component searches for its assigned key-value pairs and adds its own key-value pairs as needed to process

the order. Thus, each component only modifies its assigned key-value pairs." [Blinn: col. 12, lines 42-46] An example of a key-value pair is a SKU (stock keeping unit). [Blinn: col. 12, lines 7-34] The cited text does not indicate whether Blinn's order processing module 129 conducts any database queries at all, or whether/how the module 129 might somehow access the database 121 to conduct such a query. Lacking any disclosure that the module 129 assembles database queries, Blinn's cited passage fails to teach the "run-time engine including a query rendering engine and a query assembler." Rama, as discussed above, is also unrelated to these claimed features.

Also missing from the applied art are "subquery generators accessible by the assembler and the compiler." According to the Examiner, the claimed subquery generators are found in Blinn's col. 9, lines 14-54. [Office Action of 4-14-2004, page 3, third para.] The cited section, however, merely discusses Blinn's merchant system's use of so-called "actions." [Blinn: col. 9, lines 14-18] Blinn fails to mention that any actions include subquery generation. Accordingly, the suggestion that Blinn's actions might include query generation is mere speculation, and Blinn's disclosure fails to enable such a hypothetical teaching. A reference itself must sufficiently describe the claimed invention to have placed the public in possession of it.<sup>5</sup> Even if a claimed invention is disclosed in a printed publication, that disclosure will not suffice as prior art if it was not enabling.<sup>6</sup> Blinn's actions purportedly include adding an item to an order form, clearing an order form, initiating a purchase or insert, and deleting data from the database. An action is a routine to perform specific functions. [Blinn: col. 9, lines 14-18] Blinn, however, fails to teach or suggest query generation as such an action. The cited passage therefore fails as an enabling reference to teach the claimed subquery generators.

Moreover, subquery generators would be especially problematic in Blinn's system where queries are pre-stored in the database and called by name rather than generated external to the database. [Blinn: col. 3, lines 34-45] Rather than any

---

<sup>5</sup> *Paperless Accounting, Inc. v. Bay Area Rapid Transit System*, 231 USPQ 649, 653 (Fed. Cir. 1986). *Ex parte Gould*, 231 USPQ 421 (CCPA 1973).

subquery generators, Blinn emphasizes that any queries are prestored in the database 121 so that the merchant system 120 can operate independent of any database schema. Namely, Blinn purportedly "provides for the storage of database queries in the database to isolate applications that access the database from differences in schemas and data sublanguages. Similarly, because of the database schema independence, the order processing module of the present invention does not require modification for each change to the database." [Blinn: col. 3, lines 34-45] Despite Blinn's disclosure of "actions," then, Blinn does not disclose any "subquery generators" at all. Additionally, Blinn fails to teach subquery generators that are "accessible by the assembler and the compiler," since the assembler and the compiler are both missing from Blinn as discussed above. Accordingly, Blinn lacks the claimed are "subquery generators accessible by the assembler and the compiler." Rama, as discussed above, is also unrelated to the features of this claim.

In view of the foregoing, the features of claim 30 are absent from Blinn and Rama. For similar reasons, independent claim 21 is patentably distinguished from the proposed Blinn/Rama combination. Furthermore, claim 21 is patentable *a fortiori* over Blinn/Rama because claim 21 includes features in addition to those of claim 30. For example, claim 21 is additionally patentable because the applied art does not show the claimed combination including "multiple control schemas, and multiple query form controls each comprising an instance of one of the control schemas." As mentioned above, Blinn's own words demonstrate that Blinn has nothing to do with control schemas and instances thereof. Rather, Blinn's only mention of "schema" occurs in relation to Blinn's purported independence from schemas. For example, Blinn is said to achieve flexibility "through use of display templates and a database schema independent query mechanism." [Blinn: col. 3, lines 10-13] Furthermore, Blinn's database module is said to be "capable of retrieving data from the database without regard to its schema." [Blinn: Abstract] Claim 21's compiler is further patentable over Blinn/Rama because, in addition to the annotations and appearance

templates, claim 21's compiler has access to the "controls", which are missing from Blinn/Rama as shown above. Accordingly, relative to claim 30, claim 21 is patentable *a fortiori* over Blinn/Rama.

#### Suggestion or Motivation

In addition to the reasons given above, the *prima facie* obviousness case is also defective because there has been no suggestion or motivation, either in the references themselves, or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings.<sup>7</sup>

The office action suggests that "it would have been obvious to a person of ordinary skill in the art to include mapping between the specified appearance template and the data schema between [sic] the specified subquery generator and the data schema in the system taught by Blinn as taught by Ramanathan." [Office Action of 4-14-2004, page 3, third para.] "The motivation being to enable the the [sic] service template contains the intelligence to map the discovered instance into the service model nodes (col. 14, lines 39-59, Ramanathan)." [Office Action of 4-14-2004, page 3, third para.]

The Examiner's cited motivation was lifted from Rama's col. 14, lines 41-42. Although this passage purportedly shows a feature or benefit from Rama's system, the Examiner has still failed to clearly set forth any suggestion or motivation to modify Blinn's system by combining it with Rama's. The references are still devoid of any suggestion to modify Blinn's system by incorporating the stated features from Rama.

The law requires clear and particular evidence of a suggestion, teaching, or motivation to combine references or modify reference teachings.<sup>8</sup> Broad conclusory statements regarding the teaching of multiple references, standing alone, are not "evidence."<sup>9</sup> In addition to demonstrating the propriety of an obviousness analysis,

---

7 MPEP 2142.

8 See, e.g., *C.R. Bard, Inc. v. M3 Sys., Inc.*, 48 USPQ2d 1225, 11232 (Fed. Cir. 1998).

9 See, e.g., *C.R. Bard, Inc. v. M3 Sys., Inc.*, 48 USPQ2d 1225, 11232 (Fed. Cir. 1998)

the Federal Circuit recognizes the value of particular factual findings regarding the suggestion, teaching, or motivation to combine because this serves a number of important purposes, including: (1) clear explication of the position adopted by the Examiner and the Board; (2) identification of the factual disputes, if any, between the applicant and the Board, and (3) facilitation of review on appeal.

Accordingly, the *prima facie* case of obviousness is lacking since there has been no showing of the legally required suggestion or motivation to modify the reference or to combine reference teachings.

Rather than a legally sufficient suggestion or motivation, modification of Blinn to incorporate features from Rama is simply a result of hindsight reconstruction. This amounts to simply hunting for a missing feature until it is found in some secondary reference, and then reflexively pairing this reference with the primary reference. However, it is improper to attempt to establish obviousness by using the applicant's specification as a guide to combining different prior art references to achieve the results of the claimed invention.<sup>10</sup> The teaching or suggestion to make the claimed combination must be found in the prior art, and not based on applicant's disclosure.<sup>11</sup>

The critical inquiry is whether there is something in the prior art as a whole to suggest the desirability, and thus the obviousness, of making the combination.<sup>12</sup> Obviousness is tested by what the combined teachings of the references would have suggested to those of ordinary skill in the art.<sup>13</sup> But it cannot be established by

---

<sup>10</sup> *Orthopedic Equipment Co., Inc. v. United States*, 702 F.2d 1005, 1012, 217 USPQ 193, 199 (Fed. Cir. 1983).

<sup>11</sup> *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

<sup>12</sup> *In re Fritch*, 23 USPQ 2d 1780, 1784 (Fed. Cir. 1992) ("It is impermissible to use the claimed invention as an instruction manual or 'template' to piece together the teachings of the prior art so that the claimed invention is rendered obvious."); *Fromson v. Advance Offset Plate, Inc.*, 755 F.2d 1549, 1556, 225 USPQ 26, 31 (Fed. Cir. 1985) (nothing of record plainly indicated that it would have been obvious to combine previously separate lithography steps into one process). See e.g., *In re Gordon et al.*, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984) (mere fact that prior art could be modified by turning apparatus upside down does not make modification obvious unless prior art suggests desirability of modification); *Ex Parte Kaiser*, 194 USPQ 47, 48 (Pat. Bd. of App. 1975) (Examiner's failure to indicate anywhere in the record his reason for finding alteration of reference to be obvious militates against rejection).

<sup>13</sup> *In re Keller*, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981).

combining the teachings of the prior art to produce the claimed invention, absent some teaching or suggestion supporting the combination.<sup>14</sup> And Ateachings of references can be combined only if there is some suggestion of incentive to do so.<sup>15</sup>

To imbue one of ordinary skill in the art with knowledge of the invention in suit, when no prior art reference or references of record convey or suggest that knowledge, is to fall victim to the insidious effect of a hindsight syndrome wherein that which only the inventor taught is used against its teacher.<sup>16</sup> It is essential that Athe decisionmaker forget what he or she has been taught at trial about the claimed invention and cast the mind back to the time the invention was made. . . to occupy the mind of one skilled in the art who is presented only with the references, and who is normally guided by the then-accepted wisdom in the art.<sup>17</sup>

The policy of the Patent and Trademark Office<sup>18</sup> is to follow in each and every case the standard of patentability enunciated by the Supreme Court in *Graham v. John Deere Co.*<sup>19</sup> As stated by the Supreme Court:

Under ' 103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background, the obviousness or non-obviousness of the subject matter is determined. Such secondary considerations as commercial success, long felt but unsolved needs, failure of others, etc., might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented. As indicia of obviousness or nonobviousness, these inquiries may have relevancy.<sup>20</sup>

---

14 *ACS Hosp. Sys. Inc. v. Montefiore Hosp.*, 32 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984).

15 *Id.*

16 *W. L. Gore & Assoc. v. Garlock, Inc.*, 721 F.2d 1540, 1553, 220 USPQ 303, 312-313 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984).

17 *Id.*

18 MPEP 2141.

19 148 USPQ 459 (1966).

20 148 USPQ at 467.

Thus, hindsight reconstruction, using the applicant's specification itself as a guide, is improper because it fails to consider the subject matter of the invention "as a whole" and fails to consider the invention as of the date at which the invention was made.

#### Reasonable Expectation of Success

In addition to the reasons stated above, the *prima facie* obviousness case is further defective because the office action failed to show that there would be a reasonable expectation of success in modifying/combining references.<sup>21</sup> The examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness.<sup>22</sup> If the examiner does not produce a *prima facie* case, the applicant is under *no* obligation to submit evidence of nonobviousness.<sup>23</sup> Critically, to establish a *prima facie* case of obviousness, *there must be a reasonable expectation of success*.<sup>24</sup> This reasonable expectation of success must be found in the prior art, not in Applicant's disclosure.<sup>25</sup>

The office action lacks any evidence, allegation, or mere mention of the legally required "reasonable expectation of success." Since this mandatory topic is unaddressed by the office action, no *prima facie* case of obviousness has been properly established.

#### Conclusion as to Obviousness

As shown above, then, claims 21 and 30 are patentable since a *prima facie* case of obviousness does not exist. Namely, (1) the applied art fails to teach the features of the claims, (2) there is insufficient motivation to combine/modify references as proposed by the office action, and (3) there is no showing that an

---

21 MPEP 2142, 2143.02.

22 MPEP 2142.

23 *Id.*

24 MPEP 2143.

25 *In re Vaeck*, 947 F.2d 488, 20 USPQ.2d 1438 (Fed. Cir. 1991). MPEP 2143.



ordinarily skilled artisan would have a reasonable expectation of success in making the office action's proposed modification of references.

Subparagraph (v) -- OTHER GROUNDS OF REJECTION

There are no other grounds of rejection.

### CONCLUSION

For the foregoing reasons, the claims in the present application are clearly and patentably distinguished over the cited references. Accordingly, the Examiner should be reversed and ordered to pass the case to issue.

If any fees are required by this submission, an appropriate fee submittal sheet is enclosed herewith. If fees are required yet this sheet is inadvertently missing, or the fees are incorrect in amount, please charge the charge the required fees (or credit any overpayment) to Deposit Account No. 07-1445.

Respectfully submitted,



Michael Glenn  
Reg. No. 30,176  
USPTO Customer 22,862

C:\O LAW FIRM\CLIENT FILES\GPG\ENG\ENOS0001 - ENSY-002 - US APP 09-C19100\04#USPTO APPEAL BRIEF VFINAL.DOC

## **APPENDIX A**

**Applicant's claims 21, 30**

21. A query processing platform, comprising:

multiple control schemas, and multiple query form controls each comprising an instance of one of the control schemas;

one or more query form schemas and multiple query form annotations each comprising an instances of one of the query form schemas;

a data schema;

appearance templates;

a compiler including access to the controls, annotations, and appearance templates;

a run-time engine including a query rendering engine and a query assembler; subquery generators accessible by the assembler and the compiler.

30. A query processing platform, comprising:

multiple query form schemas and multiple query form annotations each comprising an instance of one of the query form schemas;

a data schema;

appearance templates;

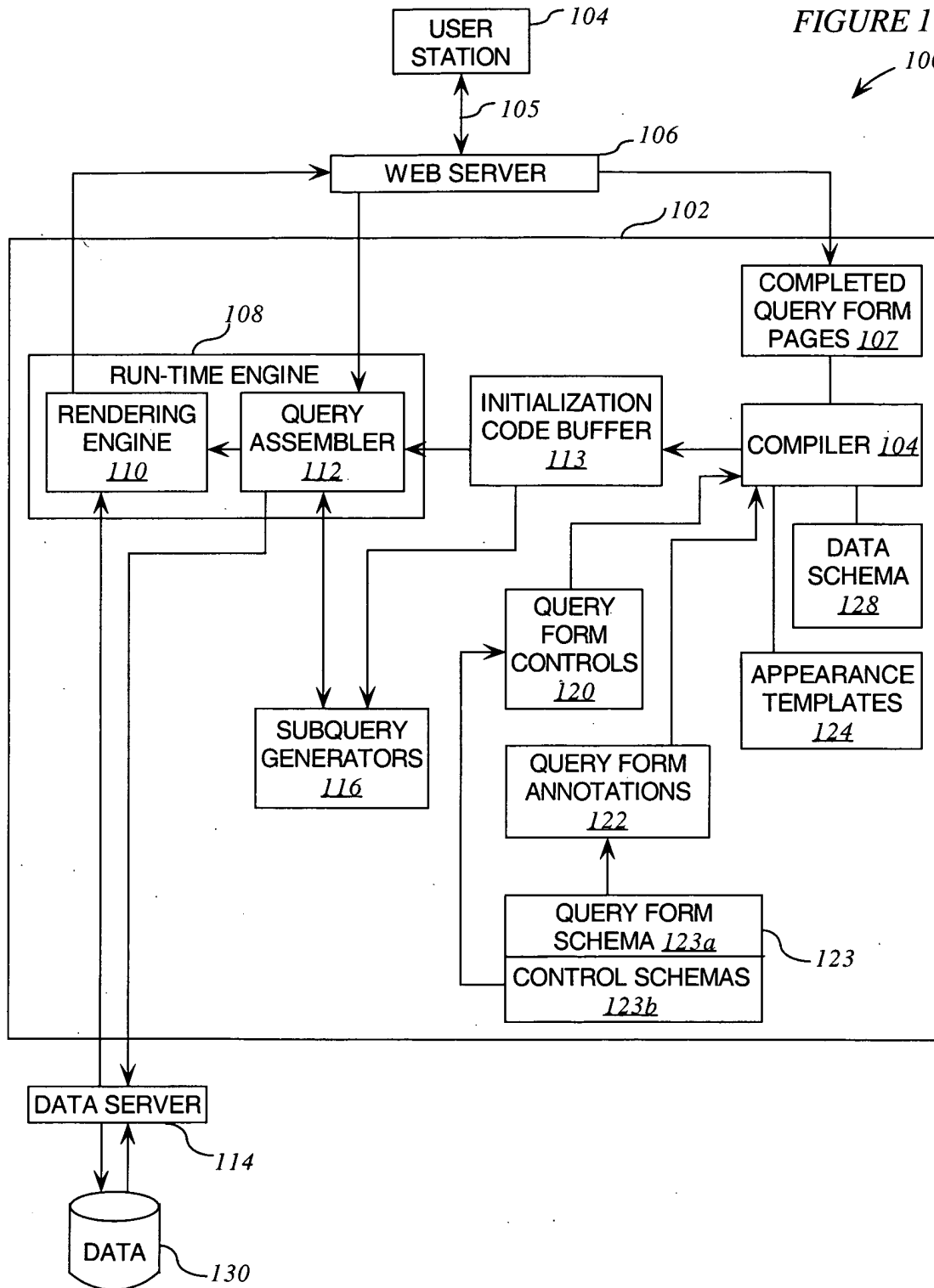
a compiler including access to the annotations and appearance templates;

a run-time engine including a query rendering engine and a query assembler; subquery generators accessible by the assembler and the compiler.

## **APPENDIX B**

### **Applicant's Figures 1-12**

FIGURE 1  
100



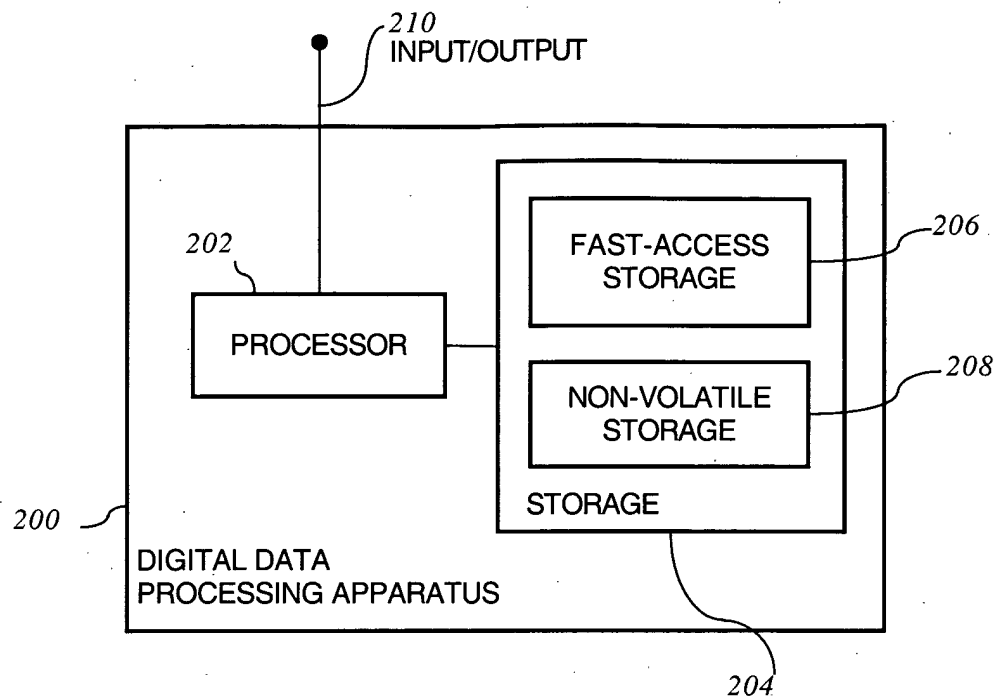


FIGURE 2

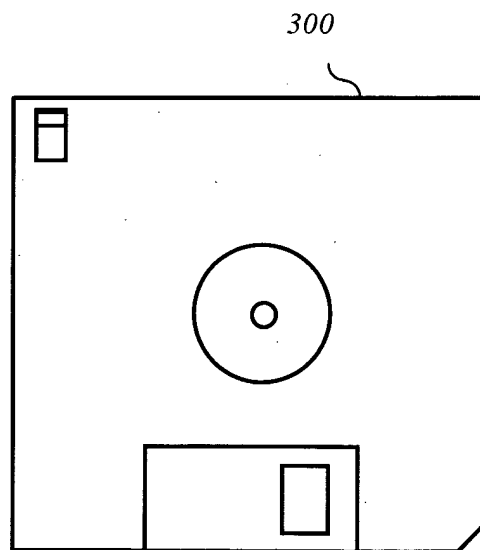


FIGURE 3

FIGURE 4

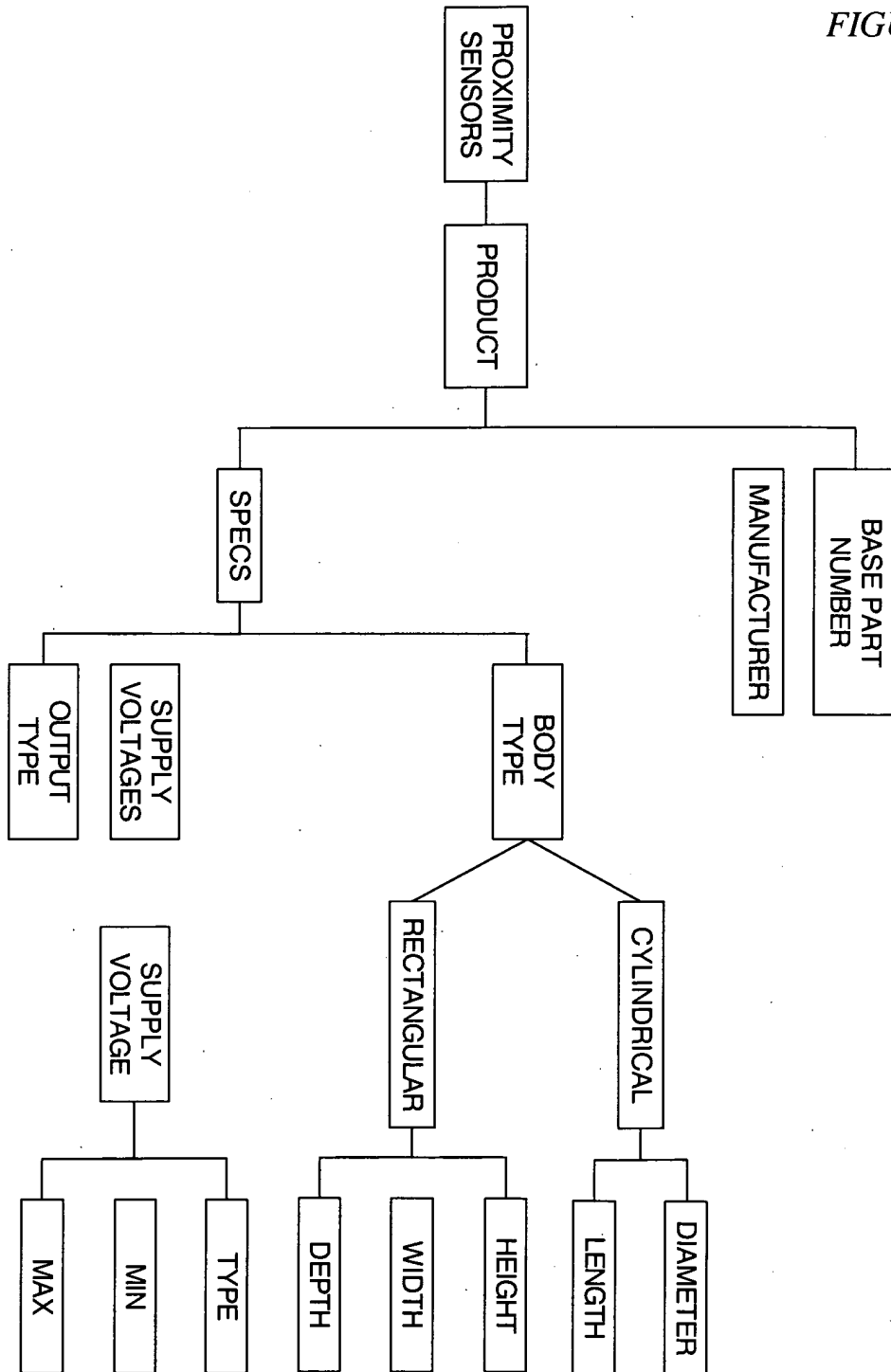
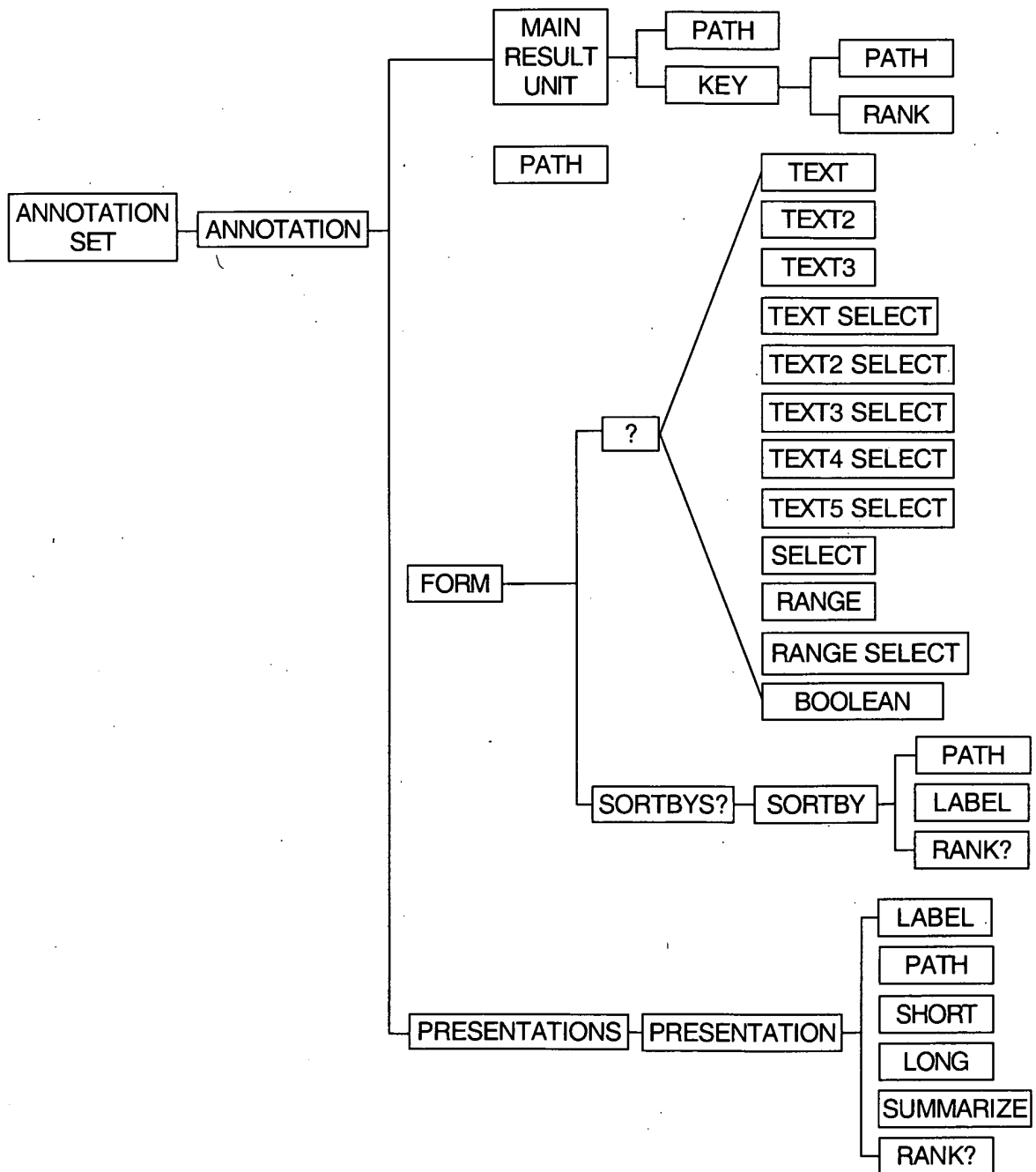
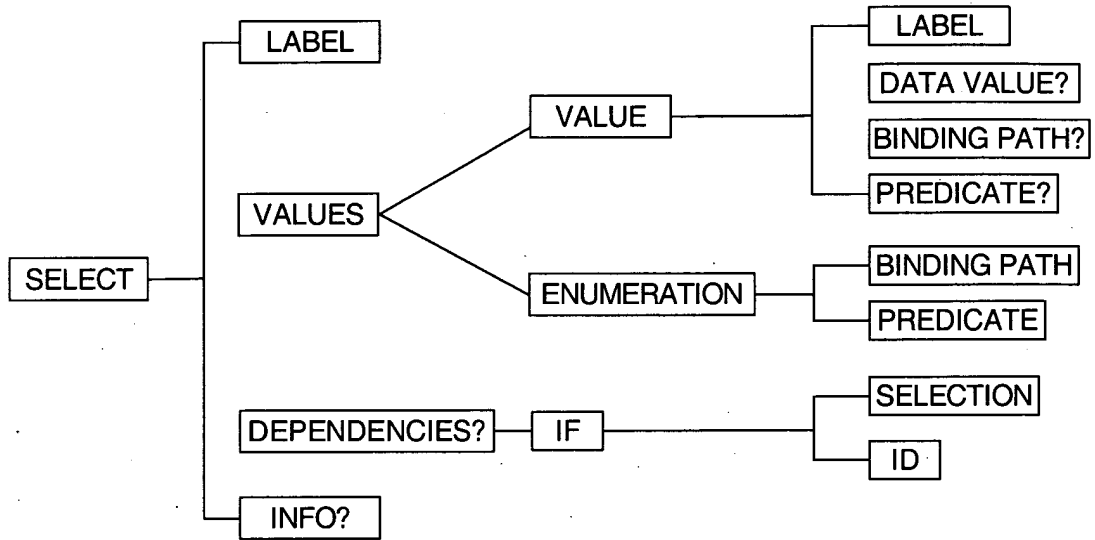




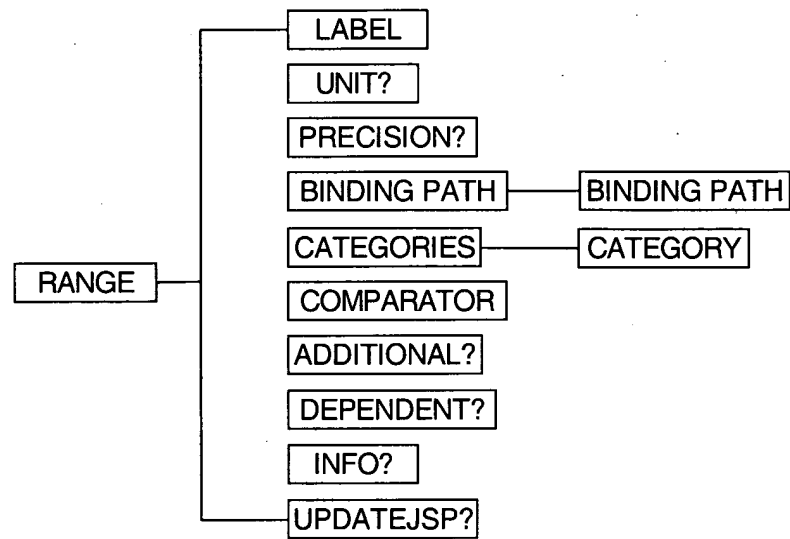
FIGURE 5



*FIGURE 6*



*FIGURE 7A*



*FIGURE 7B*

LABEL	<input type="text"/>	TO	<input type="text"/>
-------	----------------------	----	----------------------

FIGURE 7C

Manufacturer	No Preference	<input type="checkbox"/>
	No Preference	
	Balluff	
	Baumer	

Turck
-------

FIGURE 8

800

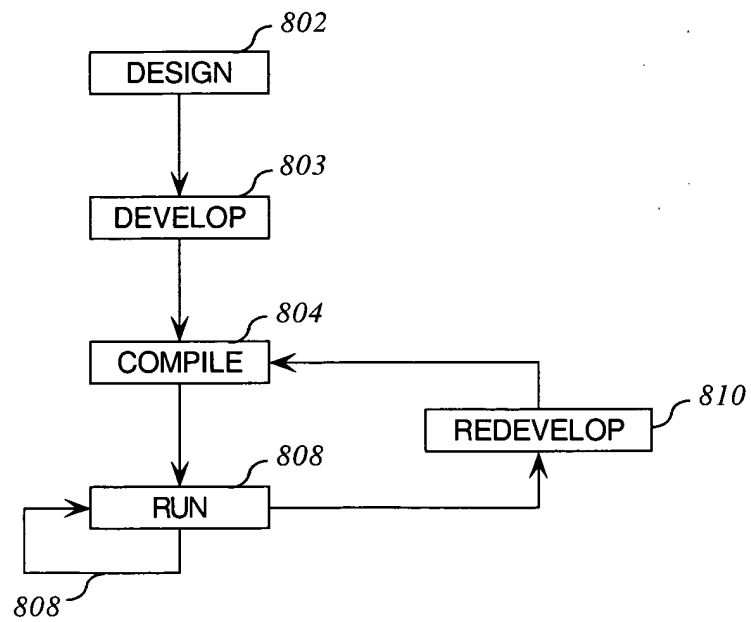


FIGURE 9B

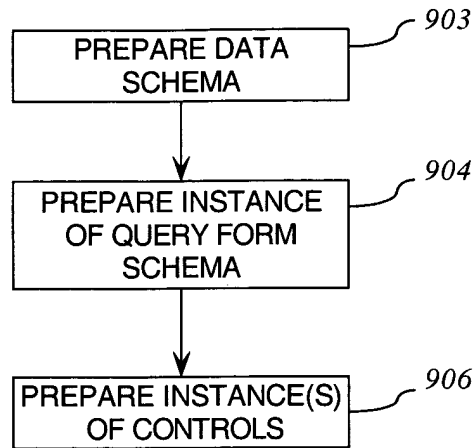


FIGURE 10

1000

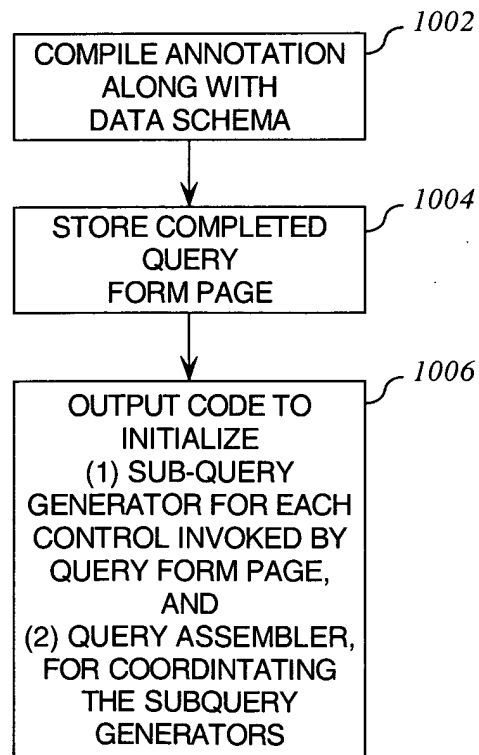
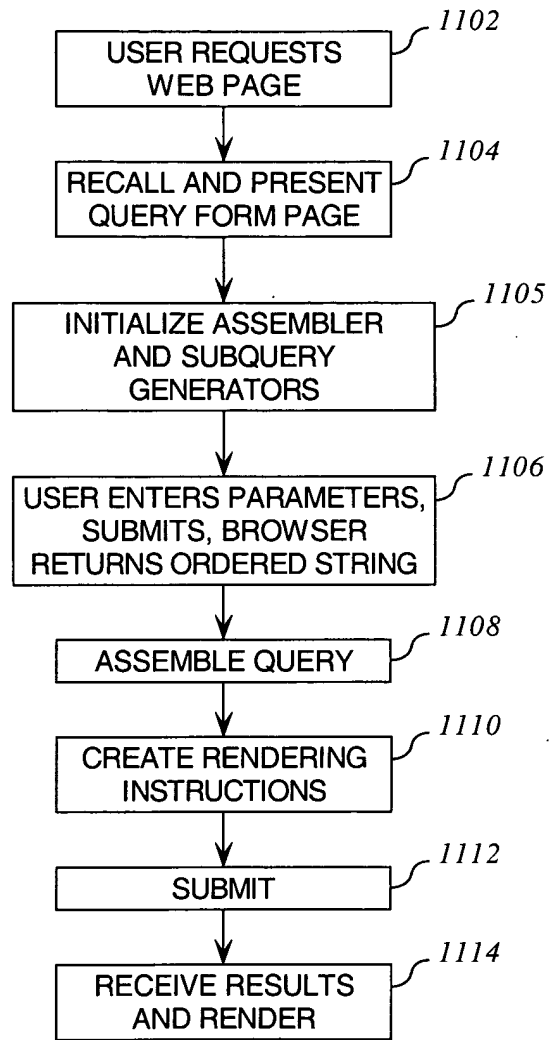


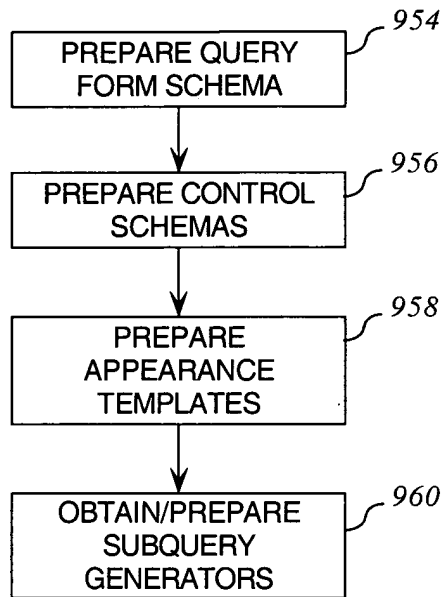
FIGURE 11

1100



*FIGURE 9A*

950  
↙



Proximity Sensors

General

Manufacturer

No Preference

Supply Voltage

2

to

20

Additional Attributes

▼

Part Number

Mechanical

Body Type

Cylindrical

Dia

25

Length

mm

Sorting & Options

Results/Page

10

Supply Voltage Min

DESC

DESC-Manufacturer

up

+

DESC-Output Type

dn

-

Reset

Execute

Next 10

Previous 10

Manufacturer	Output Type	Part Number	Supply Voltage Ranges		
All	All	All	Type	Min	Max
Turck	All		All	All	All
	All	BES-516-396-SA1-G-S49-C	AC	5	7
	EM Relay				
	Namur	BES-516-383-G-SA4-S4-C	AC	7	9
	NPN		DC	6	12
	PNP		AC	2	6
	PNP & NPN	BES-516-384-G-SA2-S4-C	DC	6	12
	PNP	BES-516-3007-E4-C-PU-5	AC	3	6
	PNP	BES-516-3017-E4-C-PU-5	DC	6	12
	PNP	BES-516-3008-E4-C-PU-5	DC	2	8
NPN		BES-516-3018-E4-C-PU-5	AC	2	12
		BES-516-3007-E5-C-S49	DC	6	12
		BES-516-3017-E5-C-S49	AC	3	9
		BES-516-3008-E5-C-S49	DC	12	18
		BES-516-3008-E5-C-S49	AC	2	12
			DC	9	12

Next

Next 10

Previous 10

1202 1204 1206 1200

FIGURE 12



## **APPENDIX C**

Copy of the Non-Final Office Action dated April 14, 2004



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/819,180	03/27/2001	Michail Petropoulos	ENSY-002	3827
23686	7590	04/14/2004	EXAMINER	
Dan Hubert & Associates 310 Twin Oaks Valley Rd #107 PMB 345 San Marcos, CA 92078-4387			NGUYEN, CINDY	
			ART UNIT	PAPER NUMBER
			2171	5

DATE MAILED: 04/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 09/819,180	Applicant(s) PETROPOULOS ET AL.	
	Examiner Cindy Nguyen	Art Unit 2171	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 August 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 10-12, 18-23, 26-32 and 35-38 is/are rejected.
- 7) ☐ Claim(s) 5-9, 13-17, 24, 25, 33 and 34 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

This is in response to amendments filed 08/13/04.

#### ***1. Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

#### **2. Claims 1, 2, 10, 11, 18-22, 26-32 and 35-38 rejected under 35 U.S.C. 103(a) as being unpatentable over Blinn et al. (U.S 5897622) in view of Ramanathan et al. (U.S 6182136) (Ramanathan).**

Regarding claims 1, 10, 11, 18-22, 26-32 and 35-38, Blinn discloses: A method for constructing a query system for use with a body of data, comprising operations of:

providing a data schema describing entries in a body of data such that the entries provide instances of the data schema (col. 12, lines 58 to col. 13, lines 3, Blinn);

providing multiple appearance templates each providing instructions for computer presentation of on-screen constructs to receive user input of query parameters (col. 7, lines 5-52, Blinn);

providing multiple control schemas each control schema prescribing constituent components of query form controls providing instances of that control schema, the prescribed components of each control schema comprising: specification of at least one appearance template and at least one subquery generator (col. 12, lines 57 to col. 13, lines 45, Blinn);

providing one or more query form schemas prescribing constituent components of corresponding query form annotations that provide instances of the query form schemas (col. 19, lines 36-61, Blinn), said components comprising: identification of one or more of instances of the control schemas; identification of elements of the data schema to be presented in query results (col. 19, lines 62 to col. 20, lines 25, Blinn).

providing multiple subquery generators each comprising machine-executable code to prepare machine-executable query instructions applying a predetermined logical operation to the body of data (col. 9, lines 14-54, Blinn).

However, Blinn didn't disclose: mapping between the specified appearance template and the data schema between the specified subquery generator and the data schema. On the other hand, Ramanathan disclose: mapping between the specified appearance template and the data schema between the specified subquery generator and the data schema (col. 14, lines 39 to col. 16, lines 56, Ramanathan). Thus, at the time invention was made, it would have been obvious to a person of ordinary skill in the art to include mapping between the specified appearance template and the data schema between the specified subquery generator and the data schema in the system of Blinn as taught by Ramanathan. The motivation being to enable the the service template contains the intelligence to map the discovered instance into the service model nodes (col. 14, lines 39-59, Ramanathan).

In addition, Blinn/ Ramanathan discloses: a compiler to create web browser compatible representations of the query form annotation (col. 10, lines 43 to col. 11, lines 35, Blinn);

A run-time engine comprising an assembler to construct queries against the data schema according to query parameters submitted by user completion of the web-browser compatible

Art Unit: 2171

representations (col. 12, lines 35-56, Blinn) and a rendering engine to provide web browser compatible output of query results (col. 19, lines 16-35, Blinn).

Regarding claim 2, all the limitations of this claim have been noted in the rejection of claim 1 above. In addition, Blinn/ Ramanathan discloses: wherein the control schemas are separate from the query form schemas (col. 12, lines 57 to col. 13, lines 3, Blinn).

**3. Claims 3, 4, 12 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blinn et al. (U.S 5897622) in view of Ramanathan et al. (U.S 6182136) (Ramanathan) and further in view of Katz et al. (U.S 5404295) (Katz).**

Regarding claims 3 and 12, most of the limitations of these claims have been noted in the rejection of claims 1 and 11 above, respectively. In addition, Blinn/ Ramanathan discloses: further comprising operations of developing the query system, comprising: constructing one or more controls, each control comprising an instance of one of the control schemas (col. 18, lines 25-48, Blinn);

However, Blinn/ Ramanathan didn't disclose: constructing one or more query form annotations, each annotation comprising an instance of one of the query form schemas. On the other hand, Katz disclose: constructing one or more query form annotations, each annotation comprising an instance of one of the query form schemas (col. 5, lines 61 to col. 6, lines 14, Katz). Thus, at the time invention was made, it would have been obvious to a person of ordinary skill in the art to include constructing query form annotations as claimed in the combination system of Blinn/ Ramanathan as taught by Katz. The motivation being to enable the users have the option to select and design the query form.

Regarding claims 4 and 23, most of the limitations of these claims have been noted in the rejection of claims 3 and 22 above, respectively. In addition, Blinn/ Ramanathan /Katz discloses: wherein the control schemas are integrated into the query form schemas (col. 13, lines 46 to col. 14, lines 15, Blinn), and the operations of constructing the query form annotations includes the operation of constructing the controls (col. 6, lines 49-62, Katz).

#### ***4. Allowable Subject Matter***

Claims 5-9, 13-17, 24, 25, 33 and 34 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: The prior art of record and that encountered while searching for the claimed invention fails to anticipate and/or suggest: a method and system for constructing a query system for use with a body of data comprising operations of compiling the query form annotation, comprising for each query form annotation in association with the constructed query form web page, initializing the subquery generators specified by the controls identified by said query form annotation as recited in claims 5, 13, 24, and 33.

Regarding claims 6-9, 14-17, 25 and 34, these claims depend from claims 5, 13, 24 and 33 respectively and are therefore allowable.

#### ***Response to Arguments***

Applicant's arguments with respect to claims 1-4,10-12,18-23,26-32 and 35-38 have been considered but are moot in view of the new ground(s) of rejection.

## **5. Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Rauer et al. (U.S 6161103). Method and apparatus for creating aggregates for use in a datamart.

Blinn et al. (U.S 6484150). Electronic shopping and merchandising system accessing legacy data in a database independent schema manner.

## **6. Contact Information**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cindy Nguyen whose telephone number is 703-305-4698. The examiner can normally be reached on M-F: 8:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Safet Metjahic can be reached on 703-308-1436. The fax phone numbers for the organization where this application or proceeding is assigned are 703-746-7239 for regular communications and 703-746-7240 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.

*CN*  
Cindy Nguyen  
April 10, 2004

*Wayne*  
WAYNE AMSBURY  
PRIMARY PATENT EXAMINER



## **APPENDIX D**

Copy of the Final Office Action dated January 10, 2005



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY-DOCKET NO.	CONFIRMATION NO.
09/819,180	03/27/2001	Michail Petropoulos	ENOS0001	3827
23686	7590	01/10/2005	EXAMINER	
Dan Hubert & Associates 310 Twin Oaks Valley Rd #107 PMB 345 San Marcos, CA 92078-4387			NGUYEN, CINDY	
			ART UNIT	PAPER NUMBER
			2161	

DATE MAILED: 01/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/819,180	PETROPOULOS ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Cindy Nguyen	2171	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 July 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 21 and 30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 1-20, 22-29 and 31-38 is/are allowed.
- 6) ☒ Claim(s) 21 and 30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 March 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other:  |

### **DETAILED ACTION**

This is in response to amendments filed 07/14/04.

Applicant's arguments with respect to claims 21 and 30 have been fully considered but they are not persuasive.

Response to Applicant' arguments on claims 21 and 30. Applicant argues that Blinn fails to teach or suggest "providing multiple control schemas and each control schema prescribing constituent components of query form controls providing instances of that control schema, the prescribed components of each control schema comprising: specification of at least one appearance template and at least one subquery generator and mapping between the specified appearance template and the data schema and between the specified subquery generator and the data schema; and providing one or more query form schemas prescribing constituent components of corresponding query form annotations that provide instances of the query form schemas, said components comprising : identification of one or more of instances of the control schemas; identification of elements of the data schema to be presented in query results. However, these limitations were not clearly specified in the claims 21 and 30, which are broader than claim 1 and not separately argued.

#### **1. Allowable Subject Matter**

Claims 1-20, 22-29 and 31-38 are allowed.

The following is a statement of reasons for the indication of allowable subject matter: The prior art of record and that encountered while searching for the claimed invention fails to anticipate and/or suggest: a method and system for constructing a query system for use with a body of data comprising operations of compiling the query form annotation, comprising: providing multiple control schemas and each control schema prescribing constituent components of query form controls providing instances of that control schema, the prescribed components of each control schema comprising: mapping between the specified appearance template and the data schema and between the specified subquery generator and the data schema as recited in claims 1, 10, 19, 22, 26, 28, 29 and 28.

The prior art of record and that encountered while searching for the claimed invention fails to anticipate and/or suggest: a method and system for constructing a query system for use with a body of data comprising operations of compiling the query form annotation, comprising: providing one or more query form schemas prescribing constituent components of corresponding query form annotations that provide instances of the query form schemas, said components comprising: mapping between the specified appearance template and the data schema and between the specified subquery generator and the data schema as recited in claims 11, 18, 2, 31, 35, 37 and 38.

Regarding claims 2-9, 12-17, 23-25, 32, 33, 36 and 34, these claims depend from claims 1, 11, 22, 27, 31 and 35 respectively and are therefore allowable.

## 2. Conclusion

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Rauer et al. (U.S 6161103). Method and apparatus for creating aggregates for use in a datamart.

Blinn et al. (U.S 6484150). Electronic shopping and merchandising system accessing legacy data in a database independent schema manner.

**3. Contact Information**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cindy Nguyen whose telephone number is 703-305-4698. The examiner can normally be reached on M-F: 8:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Safet Metjahic can be reached on 703-308-1436. The fax phone numbers for the organization where this application or proceeding is assigned are 703-746-7239 for regular communications and 703-746-7240 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.

  
Cindy Nguyen  
December 28, 2004

  
WAYNE AMSBURY  
PRIMARY PATENT EXAMINER

<b>Notice of References Cited</b>	Application/Control No. 09/819,180	Applicant(s)/Patent Under Reexamination PETROPOULOS ET AL.	
	Examiner Cindy Nguyen	Art Unit 2171	Page 1 of 2

**U.S. PATENT DOCUMENTS**

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
*	A	US-5,970,490	10-1999	Morgenstern, Matthew	707/10
*	B	US-6,199,195	03-2001	Goodwin et al.	717/104
	C	US-5,404,295	04-1995	Katz et al.	707/2
	D	US-6,182,136	01-2001	Ramanathan et al.	709/224
*	E	US-6,161,103	12-2000	Rauer et al.	707/4
*	F	US-6,484,150	11-2002	Blinn et al.	705/26
	G	US-5,897,622	04-1999	Blinn et al.	705/26
	H	US-			
	I	US-			
	J	US-			
	K	US-			
	L	US-			
	M	US-			

**FOREIGN PATENT DOCUMENTS**

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N					
	O					
	P					
	Q					
	R					
	S					
	T					

**NON-PATENT DOCUMENTS**

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	
	V	
	W	
	X	

\*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)  
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.



**SECRETARY OF STATE**

I, *Kevin Shelley*, Secretary of State of the State of California, hereby certify:

That the attached transcript of 10 page(s) has been compared with the record on file in this office, of which it purports to be a copy, and that it is full, true and correct.

**IN WITNESS WHEREOF**, I execute this certificate and affix the Great Seal of the State of California this day of

JUN 1 8 2003



*Kevin Shelley*  
Secretary of State

**AGREEMENT OF MERGER**  
of  
**EPOCH ACQUISITION CORP.**  
and  
**ENOSYS SOFTWARE, INC.**

**ENDORSED - FILED**  
In the office of the Secretary of State  
of the State of California

JUN 18 2003

**KEVIN SHELLEY**  
Secretary of State

This Agreement of Merger (the "Agreement") is made and entered into as of June 18, 2003, pursuant to and in accordance with Section 1101 of the California General Corporation Law (the "CGCL") between Enosys Software, Inc., a California corporation (the "Company"), and Epoch Acquisition Corp., a California corporation ("Merger Sub" and, together with the Company, the "Constituent Corporations"). Merger Sub is a wholly owned subsidiary of BEA Systems, Inc., a Delaware corporation ("Parent").

**RECITALS**

A. The Company, Parent, Merger Sub and Yannis Papakonstantinou, as Principal Shareholder, have entered into that certain Agreement and Plan of Merger dated as of May 16, 2003, as amended by that certain Amendment No. 1 to the Agreement and Plan of Merger, dated as of June 13, 2003 (the "Merger Agreement"), providing, among other things, for the execution and filing of this Agreement and the merger of Merger Sub with and into the Company (the "Merger").

B. The respective Boards of Directors of each of the Constituent Corporations deem it advisable and in the best interests of each such corporation and their respective stockholders and shareholders that Merger Sub be merged with and into the Company and, as a result, have approved this Agreement and the Merger.

C. The Merger Agreement, this Agreement and the Merger have been approved by the shareholders of the Company and the sole shareholder of Merger Sub.

NOW THEREFORE, in consideration of the mutual agreements and covenants set forth herein, the parties hereto hereby agree as follows:

**ARTICLE I**

**THE CONSTITUENT CORPORATIONS**

1.1 Company. The Company was incorporated under the laws of the State of California on April 20, 1999. The authorized capital stock of the Company consists of Fifty Million (50,000,000) shares of common stock, no par value per share ("Company Common Stock") and Twenty Eight Million Five Hundred Ninety Six Thousand One Hundred Sixty One (28,596,161) shares of Preferred Stock, no par value per share ("Company Preferred Stock") of which Two Million Six Hundred Sixty Nine Thousand Four Hundred Seventy Four (2,669,474) shares are

designated Series A Preferred Stock ("Series A Preferred"), Fourteen Million One Hundred Eighty Seven Thousand Five Hundred Fifty Seven (14,187,557) shares are designated Series B Preferred Stock ("Series B Preferred") and Eleven Million Seven Hundred Thirty Nine Thousand One Hundred Thirty (11,739,130) shares are designated Series B-1 Preferred Stock ("Series B-1 Preferred"). As of the date of this Agreement, there are issued and outstanding Six Million Six Hundred Eighty Six Thousand Eight Hundred Seventy One (6,686,871) shares of Company Common Stock, Two Million Six Hundred Sixty Nine Thousand Four Hundred Seventy Four (2,669,474) shares of Series A Preferred, Thirteen Million Eight Hundred Forty Six Thousand Two Hundred Fifty Three (13,846,253) shares of Series B Preferred and Zero (0) shares of Series B-1 Preferred, all of which are validly issued, fully paid and nonassessable.

1.2 Merger Sub. Merger Sub was incorporated under the laws of California on April 11, 2003. The authorized capital stock of Merger Sub consists of One Thousand (1,000) shares of common stock, no par value per share ("Merger Sub Common Stock"). As of the date of this Agreement, One Thousand (1,000) shares of Merger Sub Common Stock are outstanding, all of which are validly issued, fully paid and nonassessable and are held by Parent.

## ARTICLE II

### THE MERGER

2.1 The Merger. At the Effective Time (as defined in Section 2.2) and subject to and upon the terms and conditions of this Agreement and the applicable provisions of the CGCL, Merger Sub shall be merged with and into the Company, the separate corporate existence of Merger Sub shall cease and the Company shall continue as the surviving corporation. The Company, as the surviving corporation after the Merger, is hereinafter sometimes referred to as the "Surviving Corporation."

2.2 Effective Time; Closing. This Agreement shall be effective upon the filing of this Agreement and the officers' certificates of each Constituent Corporation with the Secretary of State of the State of California pursuant to Section 1103 of the CGCL (the time of such filing, the "Effective Time").

2.3 Effect of the Merger. The effect of the Merger shall be as provided in this Agreement and Section 1107 of the CGCL. Without limiting the generality of the foregoing and subject thereto, at the Effective Time, all the property, rights, privileges, powers and franchises of the Company and Merger Sub shall vest in the Surviving Corporation, and all debts, liabilities and duties of the Company and Merger Sub shall become the debts, liabilities and duties of the Surviving Corporation.

2.4 Articles of Incorporation. At the Effective Time, the articles of incorporation of the Company shall be the articles of incorporation of the Surviving Corporation.

2.5 Officers and Directors. The directors of Merger Sub immediately prior to the Effective Time shall be the initial directors of the Surviving Corporation, each to hold office in accordance with the articles of incorporation and bylaws of the Surviving Corporation, and the officers of Merger Sub immediately prior to the Effective Time shall be the initial and only

officers of the Surviving Corporation, in each case until their respective successors are duly elected or appointed and qualified.

2.6 Effect on Capital Stock. Subject to the terms and conditions of this Agreement, by virtue of the Merger and without any action on the part of Parent, Merger Sub, the Company or the holders of any of the following securities, the following shall occur:

(i) Series A Preferred. Each share of Series A Preferred issued and outstanding immediately prior to the Effective Time will be cancelled and extinguished and automatically converted into the right to receive cash in the amount of \$0.24129715729 per share (rounded to the nearest cent), of which \$0.03719648444 per share (rounded to the nearest cent) shall be held in an escrow for the purpose of providing a fund that can be drawn upon to indemnify the Parent for breaches of representations and warranties made by the Company in connection with the Merger (the "Escrow Fund").

(ii) Series B Preferred. Each share of Series B Preferred issued and outstanding immediately prior to the Effective Time will be cancelled and extinguished and automatically converted into the right to receive cash in the amount of \$0.24129715729 per share (rounded to the nearest cent), of which \$0.03719648444 per share (rounded to the nearest cent) shall be held in the Escrow Fund.

(iii) Series B-1 Preferred. Each share of Series B-1 Preferred issued and outstanding immediately prior to the Effective Time will be cancelled and extinguished and automatically converted into the right to receive cash in the amount of \$0.24129715729 per share (rounded to the nearest cent), of which \$0.03719648444 per share (rounded to the nearest cent) shall be held in the Escrow Fund.

(iv) Company Common Stock. Each share of Company Common Stock issued and outstanding immediately prior to the Effective Time will be cancelled and extinguished and automatically converted into the right to receive cash in the amount of \$0.01465678283 per share (rounded to the nearest cent), of which \$0.00225937512 per share (rounded to the nearest cent) shall be held in the Escrow Fund.

(v) Merger Sub Common Stock. Each share of Merger Sub Common Stock that is issued and outstanding immediately prior to the Effective Time shall be converted into and continue as one share of the common stock of the Surviving Corporation. Each stock certificate of Merger Sub evidencing ownership of any such shares shall continue to evidence ownership of such shares of capital stock of the Surviving Corporation.

### ARTICLE III

#### MISCELLANEOUS

3.1 Further Action. If, at any time after the Effective Time, any further action is necessary or desirable to carry out the purposes of this Agreement or to vest the Surviving Corporation with full right, title and possession to all assets, property, rights, privileges, powers and franchises of either the Company, Parent or Merger Sub, the officers and directors of the

Company, Parent and Merger Sub are fully authorized in the name of their respective corporations or otherwise to take, and will take, all such lawful and necessary action.


3.2 Multiple Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original, but all of which when taken together shall constitute one and the same agreement.

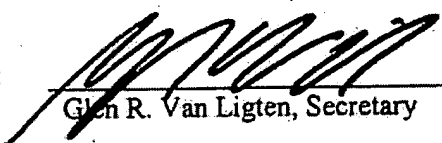
3.3 Choice of Law. This Agreement shall be construed in accordance with, and governed in all respects by, the internal laws of the State of California without giving effect to principles of conflicts of laws.

\*\*\*\*\*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized respective officers as of the date first written above.

**ENOSYS SOFTWARE, INC.**

By:   
David Banks, President and  
Chief Executive Officer

By:   
Glen R. Van Ligten, Secretary

**EPOCH ACQUISITION CORP.**

By: \_\_\_\_\_  
Robert Donohue, President

By: \_\_\_\_\_  
Cori Allen, Secretary

**BEA SYSTEMS, INC.**

By: \_\_\_\_\_  
Dave Logan, Executive Vice President,  
Corporate Development

By: \_\_\_\_\_  
Robert Donohue, Secretary

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized respective officers as of the date first written above.

**ENOSYS SOFTWARE, INC.**

By: \_\_\_\_\_  
David Banks, President and  
Chief Executive Officer

By: \_\_\_\_\_  
Glen R. Van Ligten, Secretary

**EPOCH ACQUISITION CORP.**

By: \_\_\_\_\_  
Robert Donohue, President

By: \_\_\_\_\_  
Cori Allen, Secretary

**BEA SYSTEMS, INC.**

By: \_\_\_\_\_  
Dave Logan, Executive Vice President,  
Corporate Development

By: \_\_\_\_\_  
Robert Donohue, Secretary

ENOSYS SOFTWARE, INC.

OFFICERS' CERTIFICATE OF APPROVAL OF MERGER

The undersigned, David Banks and Glen R. Van Ligten, hereby certifies that:

1. They are the President and Secretary, respectively, of Enosys Software, Inc., a California corporation (the "Company").
2. The Agreement of Merger to which this Certificate is attached (the "Merger Agreement"), providing for the merger (the "Merger") of Epoch Acquisition Corp., a California corporation with and into the Company, was duly approved by the board of directors and shareholders of the Company.
3. The authorized capital stock of the Company consists of Fifty Million (50,000,000) shares of common stock, no par value per share ("Company Common Stock") and Twenty Eight Million Five Hundred Ninety Six Thousand One Hundred Sixty One (28,596,161) shares of Preferred Stock, no par value per share ("Company Preferred Stock") of which Two Million Six Hundred Sixty Nine Thousand Four Hundred Seventy Four (2,669,474) shares are designated Series A Preferred Stock ("Series A Preferred"), Fourteen Million One Hundred Eighty Seven Thousand Five Hundred Fifty Seven (14,187,557) shares are designated Series B Preferred Stock ("Series B Preferred") and Eleven Million Seven Hundred Thirty Nine Thousand One Hundred Thirty (11,739,130) shares are designated Series B-1 Preferred Stock ("Series B-1 Preferred"). As of the date of this Agreement, there are issued and outstanding Six Million Six Hundred Eighty Six Thousand Eight Hundred Seventy One (6,686,871) shares of Company Common Stock, Two Million Six Hundred Sixty Nine Thousand Four Hundred Seventy Four (2,669,474) shares of Series A Preferred, Thirteen Million Eight Hundred Forty Six Thousand Two Hundred Fifty Three (13,846,253) shares of Series B Preferred and Zero (0) shares of Series B-1 Preferred, all of which are validly issued, fully paid and nonassessable. The total number of shares entitled to vote on the Merger as of the record date was: Six Million Six Hundred Eighty Six Thousand Eight Hundred Seventy One (6,686,871) shares of Company Common Stock, Two Million Six Hundred Sixty Nine Thousand Four Hundred Seventy Four (2,669,474) shares of Series A Preferred, Thirteen Million Eight Hundred Forty Six Thousand Two Hundred Fifty Three (13,846,253) shares of Series B Preferred and Zero (0) shares of Series B-1 Preferred. The votes of holders of a majority of the shares of Company Common Stock and the votes of holders of a majority of the shares of Series A Preferred, Series B Preferred and Series B-1 Preferred, voting together and each voting separately as a class, were required to approve the Merger and the principal terms of the Merger Agreement.
4. The Merger and the principal terms of the Merger Agreement were approved by the shareholders of the Company by a vote of (a) the number of shares of Company Common Stock, Series A Preferred, Series B Preferred and Series B-1 Preferred which equaled or exceeded the vote required for each class to approve the Merger Agreement and (b) the number of shares of Series A Preferred, Series B Preferred and Series B-1 Preferred which equaled or exceeded the vote, together as a class, to approve the Merger.



2

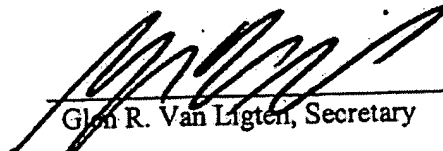
We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of our own knowledge.

Date: June 18, 2003

By:

  
David Banks, President

By:

  
Glen R. Van Ligten, Secretary

EPOCH ACQUISITION CORP.

26

OFFICERS' CERTIFICATE OF APPROVAL OF MERGER

27


The undersigned, Robert Donohue and Cori Allen, hereby certify that:

1. They are the President and Secretary, respectively of Epoch Acquisition Corp., a Delaware corporation ("Merger Sub").
2. The Agreement of Merger to which this Certificate is attached (the "Merger Agreement"), providing for the merger (the "Merger") of Merger Sub, with and into Enosys Software, Inc., a California corporation, was duly approved by the board of directors and by the sole shareholder of Merger Sub.
3. The authorized capital stock of Merger Sub consists of One Thousand (1,000) shares of common stock, no par value per share ("Merger Sub Common Stock"). The total number of shares of Merger Sub Common Stock entitled to vote on the Merger Agreement was One Thousand (1,000) shares. A vote of more than 50% of the outstanding shares of Merger Sub Common Stock was required to approve the Merger and the principal terms of the Merger Agreement.
4. The Merger and the principal terms of the Merger Agreement were approved by the consent of Merger Sub's sole shareholder holding 100% of Merger Sub's issued and outstanding shares, which vote exceeded the vote required.
5. No vote of the stockholders of BEA Systems, Inc., a Delaware corporation, was required to approve the Merger Agreement and the Merger.

[Signatures Follow on a Separate Page]

We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of our own knowledge.

Date: June 18, 2003

By:   
Robert Donohue, President

By:   
Cori Allen, Secretary



COMPLIANCE CERTIFICATE  
OF  
BEA SYSTEMS, INC.  
a Delaware corporation

June 18, 2003

The undersigned, William M. Klein, in his capacity as Executive Vice President and Chief Financial Officer of BEA Systems, Inc., a Delaware corporation ("Acquiror"), hereby certifies on behalf of Acquiror pursuant to Section 8.3(a)(i) of the Agreement and Plan of Merger dated as of May 16, 2003, as amended by that certain Amendment No. 1 to the Agreement and Plan of Merger dated as of June 13, 2003 (the "Agreement") by and among Acquiror, Epoch Acquisition Corp., a California corporation and a wholly-owned subsidiary of Acquiror, Enosys Software, Inc., a California corporation, and Yannis Papakonstantinou, that:

1. Immediately prior to the Closing, the undersigned is the duly elected, qualified, acting and incumbent Executive Vice President and Chief Financial Officer of Acquiror, and as such is familiar with the matters set forth herein.

2. Each of the representations and warranties made by Acquiror in the Agreement and in the other Transactional Agreements is accurate in all respects as if made as of the date of the Closing (provided that such representations and warranties which are by their express provisions made as of a specific date need to be accurate only as of such specific date), except to the extent that any failures of such representations and warranties to be accurate, in the aggregate, would not have, or reasonably be expected to have, a material adverse effect on Acquiror (disregarding for these purposes any materiality or material adverse effect qualifications therein contained).

3. Each of the covenants and obligations that Acquiror is required to have complied with or performed pursuant to the Agreement or any of the other Transactional Agreements at or prior to the Closing has been duly complied with and performed in all material respects.

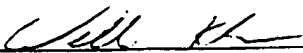
4. Each of the conditions set forth in Section 8.3 of the Agreement has been satisfied in all respects.

Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Agreement.

[Signature Follows on Separate Page]

WITNESS WHEREOF, the undersigned has executed this Certificate as of the date  
above.

**BEA SYSTEMS, INC.**

  
\_\_\_\_\_  
William M. Klein  
Executive Vice President and  
Chief Financial Officer

26

2

**ACTION BY WRITTEN CONSENT  
OF  
THE SOLE SHAREHOLDER  
OF  
EPOCH ACQUISITION CORP.**

May 15, 2003

The undersigned, constituting the sole shareholder of all of the outstanding shares of Common Stock of Epoch Acquisition Corp., a California corporation (the "Corporation"), in accordance with Section 603 of the California Corporations Code and the Bylaws of the Corporation, without the formality of convening a meeting, does hereby consent to and adopt the following resolutions:

**MERGER WITH ENOSYS SOFTWARE, INC.**

WHEREAS, the sole shareholder has been presented with a form of Agreement and Plan of Merger (the "Merger Agreement") by and among the Corporation, BEA Systems, Inc., a Delaware corporation ("BEA") and Enosys Software, Inc., a California corporation ("Enosys"), which provides for, among other things:

- (i) the merger of the Corporation with and into Enosys and the survival of Enosys (the "Merger"), and
- (ii) the automatic conversion of each outstanding share of capital stock of Enosys into the right to receive the consideration set forth in Section 3.1 of the Merger Agreement.

RESOLVED, that the form of Merger Agreement presented to the undersigned shareholder and the transactions contemplated thereunder are hereby adopted and approved in all respects;

RESOLVED FURTHER, that the Merger of the Corporation with and into Enosys is hereby approved;

RESOLVED FURTHER, that the officers of the Corporation be, and they hereby are, authorized, empowered and directed, for and on behalf of the Corporation and as its act and deed, to execute the Merger Agreement and such other agreements as the officers deem appropriate, with such changes therein as shall be approved by any of the officers of the Corporation who execute the same,

such execution to be conclusive evidence of such approval, and to take any other actions as necessary to effectuate the actions related thereto as contemplated therein;

RESOLVED FURTHER, that the officers of the Corporation are hereby authorized to execute and file an Agreement of Merger merging the Corporation with and into Enosys, with the California Secretary of State, and to make such other filings as may be necessary to effect the merger; and

RESOLVED FURTHER, that any and all actions heretofore taken by the officers and directors of the Corporation as to the above-referenced matter are hereby ratified, approved and confirmed as the act and deed of the Corporation.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

Executed as of the date first written above.

THE SOLE SHAREHOLDER OF  
EPOCH ACQUISITION CORP.

BEA Systems, Inc.

By: Mark Dentinger

Name: Mark Dentinger

Title: Senior Vice President and Corporate  
Controller



**This Page is Inserted by IFW Indexing and Scanning  
Operations and is not part of the Official Record**

## **BEST AVAILABLE IMAGES**

Defective images within this document are accurate representations of the original documents submitted by the applicant.

Defects in the images include but are not limited to the items checked:

- ☐ **BLACK BORDERS**
- ☐ **IMAGE CUT OFF AT TOP, BOTTOM OR SIDES**
- ☐ **FADED TEXT OR DRAWING**
- ☐ **BLURRED OR ILLEGIBLE TEXT OR DRAWING**
- ☐ **SKEWED/SLANTED IMAGES**
- ☐ **COLOR OR BLACK AND WHITE PHOTOGRAPHS**
- ☐ **GRAY SCALE DOCUMENTS**
- ☐ **LINES OR MARKS ON ORIGINAL DOCUMENT**
- ☐ **REFERENCE(S) OR EXHIBIT(S) SUBMITTED ARE POOR QUALITY**
- ☐ **OTHER:** \_\_\_\_\_

### **IMAGES ARE BEST AVAILABLE COPY.**

**As rescanning these documents will not correct the image problems checked, please do not report these problems to the IFW Image Problem Mailbox.**